



Appeal Decision

Site visit made on 7 January 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/L3815/C/19/3234718

Land at Highleigh Nurseries, Highleigh Road, Sidlesham, Chichester, West Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Glenn Devenish of Love Food Trading Ltd against an enforcement notice issued by Chichester District Council.
- The enforcement notice was issued on 1 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land to a use for the storage and distribution of frozen food products.
- The requirements of the notice are: (i) Cease the use of the land for the storage and distribution of frozen food products; and (ii) Remove the three refrigerated containers units and frozen food products from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

The Enforcement Notice

1. The appeal site is comprised of a substantial area of land and buildings. When I visited, four shipping containers were stationed towards the north-east corner of the site and were in use for the storage and distribution of frozen food products. However, polytunnels containing large quantities of plants covered significant parts of the rest of the site. According to the appellant, horticulture is a primary use of the site. There was no firm evidence to indicate that the storage and distribution use enforced against was ancillary to the horticultural activity, or that it was in a separate planning unit. Consequently, the available evidence indicates that the site is in a mixed use.
2. When as in this instance, a material change to a mixed use is enforced against, all the components of that use are required to be specified in the allegation, even if it is considered expedient that only one component should cease. As set out in relevant case law, where a site is in a single mixed use, it is not open to the Council to decouple elements of it. The use of that site is the single mixed use with all its component activities¹. Consequently, the alleged breach of planning control in the enforcement notice is incorrect.
3. At s176(1), the Act provides for correcting any defect, error or misdescription in the notice, or varying its terms, provided there is no injustice caused. I sought the views of both main parties on whether the notice could be corrected

¹ *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin).

to refer to all components of the mixed use. However, the Council was not sure whether the site also contained other, unspecified, primary uses, whilst the appellant referred to the site also being used for the storage and distribution of plants. In the absence of any agreement between the parties about the nature of any mixed use, any correction would therefore be in uncertain terms and may not address the mixed use the Council believe to be taking place.

4. Specifying components of a mixed use in the allegation where there are no corresponding steps requiring such activities to cease, would also have consequences in terms of granting an unconditional planning permission for those activities, having regard to the effect of s173 (11) of the Act. Conversely, the appellant might well have advanced a more expansive case in their ground (a) appeal and potentially, they would have appealed on additional grounds, had other components of the mixed use been specified in the allegation when the notice was issued. Moreover, if the notice were to be corrected to describe a mixed use, I could not be certain that all persons with an interest in the site which might be materially affected had been served with a copy of the notice, as required by s172 (2) of the Act. As a result, it is entirely possible that persons with an interest who might otherwise have appealed against the notice had the allegation been correct initially, would then be denied the opportunity to do so. Therefore, depending on the outcome of the appeal, there would potentially be injustice caused to the Council, the appellant or to other parties with an interest in the site if the notice were to be corrected to refer to a mixed use.
5. I have also considered whether reducing the area of land to which the notice relates would overcome the problems identified above. However, the precise boundaries of the storage and distribution use enforced against, including the access, parking and servicing arrangements, cannot be clearly distinguished from parts of the site also in horticultural use. Consequently, it would still be necessary to include land which is in a mixed use on the plan attached to the notice. In any event, correcting the notice in that manner would not accurately reflect the extent of the planning unit.
6. Accordingly, I find that the notice is incapable of correction.

Conclusion

7. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (b), (e) and (f) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

8. The enforcement notice is quashed.

Stephen Hawkins INSPECTOR